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FROST BROWN TODD LLC 2200 PNC Center 201 E. Fifth Street Cincinnati, OH 45202-4182			FLEISCHER, MARK A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/624,283	WHITACRE ET AL.
	Examiner MARK A. FLEISCHER	Art Unit 3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 June 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 and 15-20 is/are pending in the application.
 - 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 and 15-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 June 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Status of Claims

1. This Final Rejection is in reply to the response to the first non-final rejection, filed on 2 June 2008.
2. Claims 5, 6, 8, 9 and 11 have been amended.
3. Claims 13 and 14 have been canceled.
4. Claims 15–20 have been added.
5. Claims 1–12 and 15–20 are currently pending and have been examined.

Response to Amendment

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.
7. The objection to the specification in the previous office action is withdrawn in light of Applicant's amendments.
8. The objection to claim 10 is withdrawn in response to Applicant's arguments and clarification.

Response to Arguments

9. Applicant's arguments filed 2 June 2008 have been considered, but they are moot in view of the new ground(s) of rejection. In an effort to elucidate the applicability of the selected prior art, and further elucidate the relevant issues, the Examiner notes the following with regard to Applicant's arguments.
 - Applicant argues that while Stuart, the prior art of record for the Section 102(b) rejection, does teach "report[ing] on certain qualitative aspects of an agent's performance" (Remarks page 9) it does not anticipate *generating a performance grade* using 'qualitative data' where the operative term is 'generating'. Applicant is correct in noting that qualitative data is not obviously involved in *generating a performance grade*,

however, the use of information described in Stuart is a bit more subtle. For example, qualitative factors that affect a performance measure are described in this manner: "It should be appreciated that a relatively high number of multiple search calls could indicate that call agent 13 needs more training because he or she is having difficulty finding the information requested by callers. Further, while not illustrated, it should be appreciated that reports including totals for other call types, such as audio response calls or miscellaneous calls, could also provide a more detailed determination of the performance of call agent 13." Although this example uses a quantitative measure (the number of multiple search calls), it establishes a **qualitative** indication of performance in that the call agent in question might require "more training". Nevertheless, it appears that the direct use of qualitative data reflecting performance is absent and that performance in Stuart "is based entirely on quantitative data" (Remarks page 9) as Applicant suggests, thus requiring new grounds of rejection.

- Applicant further argues that the prior art does not address the limitations pertaining to "a performance score based on quality" where 'quality' is a "category of performance". Applicant goes on to provide analogous qualitative categories such as "efficiency, effectiveness, attendance, and professionalism". Examiner notes however, that with the exceptions of 'effectiveness' and 'professionalism' the above categories are all amenable to quantitative assessment. Applicant states that "the [prior] office action mischaracterizes the *scale* used to rate the performance categories as the *performance category itself*." Applicant goes on to describe examples of "a performance score based on quality" (Remarks page 14): "Thus in the present application, it would be feasible for an agent to obtain either "unacceptable" scores for quality or "excellent" scores for quality. However, such scores are only *measures of the performance category* and do not constitute the *performance category of quality itself*." Applicant points out as an example of the mischaracterization (noted above) Loya's use of a point scale in various job performance categories "such as attendance, motivation, and efficiency." (Remarks page

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13). Applicant's argument in this area is, however, somewhat flawed. The disclosure describes some of these 'quality' areas and how they are assessed and measured. Applicant notes that the qualitative aspects are measured on a 5 point scale and that it is the *labels* of the scale that reflect the nature of a given performance as 'qualitative'. Examiner agrees that Applicant has provided distinct categories for assessing 'quality' and so forth and addresses these related issues below.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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11. Claims 1–12 and 15–20 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. The claim is not a process, machine, manufacture, or composition of matter, or any improvement thereof. Based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876). An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a §101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus, or components thereof, that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 2, 4, 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Stuart, et al.* (US 20010032120 A1) in view of *Berkson* (US 6049779).

Claim 1:

Stuart, as shown, describes and/or discloses the following limitations.

- *A method of managing performance of an employee, comprising:*
 - *collecting a set of quantitative data generated as a result of employee activities* (Stuart, in at least the abstract states: "A method of evaluating call agent efficiency is disclosed that includes the step of collecting agent call handling data [...]" (emphasis added) and in [0003] states: "[T]he call distributor may possess some type of capability to monitor and report on certain quantitative and qualitative aspects of the agent's call handling performance." (emphasis added) where 'evaluating employee efficiency' corresponds to *managing performance of an employee*, 'collecting...data' corresponds to *collecting a set of ... data* and 'quantitative' corresponds to the aforementioned data as noted in the limitation.);
grade
 - *displaying an intuitive representation of the performance grade* (Stuart, in at least [0045] states: "In addition, while the graphical report [...] has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information for management and call agents [] in a useful manner." (emphasis added) where 'display information' corresponds to *displaying...* and where the 'bar graph' corresponds to *performance grade* and 'in a useful manner' corresponds to *an intuitive representation...*).

Stuart does not specifically teach the following limitations, but Berkson, in an analogous art, does as shown.

- *collecting a set of qualitative data input characterizing employee performance* (Berkson [abstract] states: "The communications monitor facilitates the gathering of qualitative performance data in a second database." (emphasis added));
- *generating a performance grade based on the sets of quantitative and qualitative data* (Berkson [1,61]: "The quantitative and qualitative measures are then

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multiplied network together to generate a current indicator of a particular agent's overall performance." (emphasis added) where 'current indicator' corresponds to a *performance grade* and the 'quantitative and...' corresponds to *based on the sets of quantitative and qualitative data*;

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 2:

Stuart describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *collecting customer management service (CMS) information characterizing actions by a customer service agent from a plurality of CMS systems* (Stuart, in at last [0022] states: "Collection module [] preferably interfaces with [...] other existing data collection systems, to collect agent call handling data, such as that data previously mentioned." (emphasis added) where the 'collection module' corresponds to the CMS, the 'existing ... collection systems' corresponds to *a plurality of CMS systems* and the 'agent call handling data' corresponds to *actions by a customer service agent*).

Claim 4:

Stuart, as shown, describes and/or discloses the limitations of claim 2 as shown above. Stuart further describes and/or discloses the following limitations.

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- *receiving call duration information* (Stuart, in at least [0006] states: "... all agent call handling data is collected [...]. (emphasis added) where 'data ... collected' corresponds to *receiving call ... information*. In Stuart [0004] specific reference is made to *call duration*: "This absolute ratio would be calculated dividing the total amount of time an agent or agents spent handling calls by the total number of calls handled by the particular agent or agents.");
- *receiving time keeping information* (Stuart, in at least claim 12 states a method of "utilizing real-time agent call handling data");
- *referencing an efficiency target* (Stuart, in at least [0009] describes: "[...] a system for evaluating call agent efficiency..." (emphasis added) and Stuart, in at least [0027] states: "These standards are flexible because management can decide what criteria are important for evaluation, and then input only these criteria as standards." (emphasis added) where 'standards' and 'criteria' correspond to *efficiency target* which, since 'management can decide', *ipso facto* means they are *referenc[ed]*.); and
- *generating an efficiency score based on a comparison of the call duration information with the time keeping information and efficiency target* (Stuart, in at least [0009] describes: "[...] a system for evaluating call agent efficiency includes [...] a means for determining a cost based performance indicator for the at least one call agent is also provided, wherein the cost based performance indicator is a function of said agent call handling data and said agent cost data." (emphasis added) where 'determining...' corresponds to *generating an efficiency score* that is based on 'call handling data' which encompasses *time keeping information*. In at least [0027], Stuart describes "flexible thresholds" that serve as *efficiency target[s]*. In at least [0047] Stuart describes "Standard reports, either automatically generated or those generated on demand, allow for a comparison of the actual performance of call agent [], with standards, [...]." (emphasis added) and in [0048] teach how data is compared

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to "statistical thresholds", hence meet the limitation pertaining to data that are compared.)

Claim 6:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *receiving time keeping information* (Stuart, in at least claim 12 states a method of "utilizing real-time agent call handling data" (emphasis added) where 'utilizing' *ipso facto* requires that such information is *receiv[ed]*);
- *receiving on-line time information* (Stuart, in at least [0004] describes and/or discloses: "agent performance measures monitored by the server, such as the number of calls handled by an agent, the average work time per call of the agent [...] " (emphasis added) where the 'average work time per call' corresponds to *on-line information* that is 'monitored', i.e., *receiv[ed]*);
- *referencing an effectiveness target* (Stuart, in at least [0049] states: "This projected C/SWM could be reported to call agent [] as a goal toward which to work." (emphasis added) where the 'projected ... as a goal toward' is *an effectiveness target* that is 'reported...' hence *referenc[ed]*); and
- *generating an effectiveness score based on a comparison of the on-line time information with the time keeping information and effectiveness target* (Stuart, in at least [0042] describes: "As indicated, it should be appreciated that Agent 2 is over fours times more cost effective than Agent 1." (emphasis added) and further references "[t]he C/SWM" metric as described above.).

Claim 7:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *excluding a measure in response to a supervisor do-not-apply selection* (Stuart, in at least [0027] states: "These standards are flexible because management can decide

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what criteria are important for evaluation, and then input only these criteria as standards." (emphasis added) where 'management' corresponds to a *supervisor* that 'can decide what criteria', hence is functionally equivalent to *excluding a measure* that is 'decide[d]' which is equivalent to a *selection*.)

Claim 10:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *assigning the quantitative data to a supervisor of the employee for managing performance of the supervisor* (Stuart, in at least [0054] states: "[A] supervisor is presented with a full picture that can allow him or her to make an informed and accurate judgment regarding the performance of individual call agents [...]" (emphasis added) where 'a supervisor is presented with a full picture' corresponds to *assigning the quantitative data to a supervisor*. Stuart goes on to state "Further, the present invention could also enable supervisors to redirect much of their time now devoted to the collection and analysis of performance data to other, more important, tasks. For instance, management time could be utilized much more effectively in working with individual call agents and training call agents to correct specific problems." (emphasis added) where the emphasized text corresponds with *managing performance of the employee* (see the objection to claim 10). Finally, these elements all pertain to data as described throughout Stuart. See e.g., the abstract).

14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart/Berkson as applied to claims 1 and 2 above, and further in view of Scarborough (US 7080057 B2).

Claim 3:

Stuart, as shown, describes and/or discloses the limitations of claims 1 and 2 as shown above. Stuart further describes and/or discloses the following limitations.

- *receiving time keeping information* (Stuart, in at least [0006] states: "[A]ll agent call handling data is collected and then stored for a period of time." (emphasis added)

where the data that 'is collected' encompasses *time keeping information*. Note also that in [0031, Stuart refers to "the standard work time, as calculated ..." (emphasis added) where 'work time' specifically corresponds to *time keeping information* which is *receiv[ed]* as noted in [0049]: "[...] the average number of calls and/or type of calls that are received during a given period of time, and input this information as the hypothetical call agent handling data." (emphasis added) where the time of the inputs is *ipso facto* included in the 'call agent handling data'.);

- *receiving an assigned schedule* (Stuart, in at least [0049] states: "[M]anagement could utilize this feature to determine the most cost effective combination of call agents [] to be scheduled for one or more shifts." (emphasis added) where the aforementioned 'feature' corresponds to data to be used in scheduling an agent. Note that this data, must, *ipso facto*, be received.);
- *referencing an [] target* (Stuart, in at least [0049] states: "[M]anagement could use this feature as a motivational tool for one or more call agents [], or to set goals for one or more of the call agents []." (emphasis added) where the 'goals' corresponds to *attendance target*.);
- *generating [] score based on a comparison of the time keeping information with the assigned schedule and the [] target* (Stuart, however, refers to the notion of 'thresholds': "[F]lexible thresholds, can be [...] applied to agent call handling [...] to generate subsets of data for the reporting module. The flexible thresholds are preferably the parameters set by management to trigger the generation of real-time exception reports." (emphasis added) where the 'parameters...' corresponds to *attendance target*. Note also, that the concept of 'exception reports' in conjunction with threshold values *ipso facto* requires a *comparison of time keeping information* as values exceeding threshold values 'trigger' such reports. Finally, the time keeping information is associated with a schedule as in Stuart [0042]: "While it is true that Agent 2 started with a higher

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number of scheduled, or base, work hours than Agent 1, note that the net work time adjustments for Agent 2 were positive, resulting in a high number of productive hours for the week." (emphasis added) where a 'scheduled' workload is described and 'productive hours' further corresponds to attendance score.)

Neither Stuart nor Berkson specifically disclose targets pertaining to attendance, but Scarborough, in an analogous art, does as shown. (Scarborough, in at least col. 17, line 13 states: "Quantitative indicators about attendance [...] and other performance measures may also be collected." (emphasis added) where the notion of attendance data is collected. Examiner further takes **Official Notice** that it is old and well-known as well as common place employee appraisal arts that attendance is a typical metric used in the evaluation of employees.)

The inventions of Stuart, Berkson and Scarborough pertain to methods for evaluating the performance of employees or prospective employees using various methods of data collection and processing. Scarborough specifically describes and/or discloses the use of attendance data--a commonly used metric in such contexts as indicated in the above **Official Notice**. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart/Berkson and Scarborough to create a flexible and usable employee management system that encompasses targeted attendance because attendance is an important and well-established factor in productivity rates. By incorporating this data in an employee management system, a realistic and useful set of evaluation criteria are established thereby making such invention more practical and useful.

15. Claims 5, 8, 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart/Berkson as applied to claim 1 above, and further in view of Richman (US 6754874 B1).

Claim 5:

Stuart does not specifically teach the following limitations, but Berkson, in an analogous art, does as shown.

- [] to input qualitative performance scores (Berkson [1,61]: "However, qualitative measures, such as courteousness, professionalism, and accuracy of response, are

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obtained by a supervisor listening to a call and evaluating the agent's performance. The quantitative and qualitative measures are then multiplied together to generate a current indicator of the agent's overall performance. The current indicator of the overall performance is fed, in the form of a scaled number, to the agent for viewing through the agent's communications terminal." (emphasis added) where the emphasized text corresponds to *qualitative performance scores* and 'is fed' corresponds to *to input*);

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart nor Berkson specifically teach the following limitations, but Richman, in an analogous art, does as shown.

- *prompting a supervisor* ... (Richman, [18,2]: "After selecting a standard report from the list, the user is prompted to enter in the report criteria [...]" (emphasis added) where 'user' corresponds to *supervisor* and 'enter ... criteria' corresponds to *input qualitative performance scores*. In at least [2,33], Richman further states: "[T]he second set of data includes the supervisor's performance evaluation of the employee." (emphasis added) which *ipso facto* requires some input from a supervisor.)
- *accessing qualitative comment entries in response to a supervisor input* (Richman, in at least col. 6, line 13 states: "The Career Counselor [...] accesses the Employee

Evaluation Database [...] and inputs information summarizing the counseling sessions into the Evaluation system." (emphasis added) where 'accesses' and 'information summarizing the ...' corresponds to *accessing qualitative comment entries...that result from a supervisor's evaluation per the rejection above.);*

- *receiving a qualitative entry from the supervisor referencing a qualitative target* (Richman, in claim 40 states: "the second interface is an electronic form for receiving inputs on employment goals of the first user." (emphasis added) where 'receiving inputs ...' corresponds to *receiving a qualitative entry...that referenc[es] 'employment goals'.); and*
- *generating a qualitative score based on a comparison of the qualitative entry with the qualitative target* (Richman, in at least col. 14, line 65 states: "A second column labeled "actual" will be completed at the end of the year to facilitate comparison between the goal target and the actual results." (emphasis added) where the 'comparison...' is made between a 'goal target' which corresponds to *qualitative target*. This is encompassed in reports in col. 17, line 56: "The Evaluation System may be used to generate standard reports and custom reports." (emphasis added) and these reports encompass a 'score' as shown in col. 18, line 17: "The Evaluation System allows for searching by [...] evaluation score, and all other data items that are stored within the database." (emphasis added) hence a *score* is *generated* as per the limitations.)

Both Stuart/Berkson and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods. Stuart refers to both quantitative and qualitative metrics and Berkson delineates many qualitative performance categories while both Berkson and Richman provide methods for using them to generate scoring systems and 'scorecards'. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating both quantitative and qualitative measures in employee

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performance appraisals provides a broader reach in how employees are appraised and so provides greater flexibility and applicability of the invention and, further, the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 8:

Stuart describes and/or discloses

- *plotting a grading scale* (Stuart, in claim 19 states: "means for reporting said cost based performance indicator includes a means for displaying a graphical representation of said cost based performance indicator." (emphasis added) where 'displaying ...' corresponds to *plotting*...Also, in [0045] Stuart specifically refers to call agent performance [...] has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information [...] in a useful manner." (emphasis added) where the 'bar graph' corresponds to *plotting a grading scale* as does a 'number of ...'); and
- *displaying an indicator upon the grading scale corresponding to a compiled performance score* (see the preceding text relating to the rejection under Stuart where the notion of displaying in a graphical format is described).

Stuart does not specifically teach the following limitations, but Berkson, in an analogous art, does as shown.

- *... based upon a compiled plurality of [] quantitative and qualitative performance measures* (Berkson [1,61]: "The quantitative and qualitative measures are then multiplied network together to generate a current indicator of a particular agent's overall performance." (emphasis added) where 'current indicator' corresponds to a *performance grade* and the 'quantitative and...' corresponds to *based on the sets of quantitative and qualitative data*).

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well,

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but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart nor Berkson specifically describe and/or disclose the following limitations, but Richman, as shown, does.

- *weighted [...] measures* (Richman [18,8]. Furthermore, Examiner takes **Official Notice** that it is old and well-known as well as common place in the scorecarding arts to utilize the technique of *weight[ing]* various metrics to obtain an overall metric.)

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and various ways to convey appraisal information. Moreover, the evaluation process is often encumbered because "the format of the information does not readily allow for convenient meta-level analysis." (Richman [2,8]) which is overcome by the teachings of Richman. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart/Berkson and Richman because incorporating the weighted scoring methods, rating scales and graphical display in employee performance appraisals systems provides a more user friendly system and hence greater likelihood of market success of the system and the technical ability existed at the time of the invention to combine the above elements as claimed and the results of the combination were predictable.

Claim 9:

Stuart further describes and/or discloses the following limitations.

- *referencing compiled performance scores for a plurality of individuals assigned to a group* (Stuart, in at least [0004] states: "In calculating the %AWT, an agent's AWT is

compared to an average of an overall group's AWT." (emphasis added) where 'compared...' corresponds to *referencing* and a 'group's AWT' corresponds to *performance scores for ...individuals.*);

- *computing a combined score for the group* (Stuart, in at least [0049] states: "This information could then be input for different combinations of call agents [] to determine the most cost effective group [...]." (emphasis added) where 'different combinations...' corresponds to a *combined score* as it involves a measure for the 'most cost effective group' and 'to determine' corresponds to the act of *computing a combined score.*);
- *plotting a grading scale* (Stuart, in claim 19 states: "means for reporting said cost based performance indicator includes a means for displaying a graphical representation of said cost based performance indicator." (emphasis added) where 'displaying ...' corresponds to *plotting*...Also, in [0045] Stuart specifically refers to "call agent performance [...]" has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information [...] in a useful manner." (emphasis added) where the 'bar graph' corresponds to *plotting a grading scale* as does a 'number of ...'),
- *displaying an indicator upon the grading scale corresponding to the computed combined score for the group* (see the preceding text relating to the rejection under Stuart where the notion of displaying in a graphical format is described. Also, note that the *computing* and the 'display' described applies to *groups* as shown in Stuart [0052]: "The flexibility provided [...] allows the C/SWT to be calculated for an individual call agent, a call agent team, an entire call center, a base unit comprised of multiple call centers, or the entire call servicing system. Further, the novel graphical reports generated by the present invention preferably utilize standard statistical techniques to graphically represent significant statistical deviations in productivity

among operators, groups or call service centers through the use of bell curves, trended data analysis, and other statistical techniques." (emphasis added) .

Stuart does not specifically teach the following limitations, but Berkson, in an analogous art, does as shown.

- ... *based upon a compiled plurality of [] quantitative and qualitative performance measures* (Berkson [1,61]: "The quantitative and qualitative measures are then multiplied network together to generate a current indicator of a particular agent's overall performance." (emphasis added) where 'current indicator' corresponds to a *performance grade* and the 'quantitative and...' corresponds to *based on the sets of quantitative and qualitative data*)

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 20:

Neither Stuart nor Berkson nor Richman specifically describe and/or disclose the following limitations:

- *plotting the grading scale and displaying the indicator upon the grading scale further comprise:*
- *proportioning grade ranges by their relative weighting;*
- *stacking the grade ranges radially to form a pie chart; and*
- *including an arrow showing a composite score for the employee..*

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although Stuart in [0045] does teach “[S]ystem [] also preferably has the capability to generate graphical reports, [...] graphical reports, [...] are preferably available for both management and each individual call agent []. In addition, while the graphical report generated by call agent performance system 10 has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information for management and call agents [] in a useful manner.” (emphasis added) which provides an example of such common visual display techniques. Examiner takes **Official Notice** that it is old and well-known as well as common place in the graphical display arts that the visual display of quantitative information typically involves *proportioning grade ranges by their relative weighting*... using this information to form a pie chart as in *stacking the grade ranges radially to form a pie chart* and using various symbols, such as arrows, to serve as indicators of metrics as in *including an arrow showing a composite score for the employee*. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stuart and what is old and well-known as well as common place in the visual display arts so that useful information is readily displayed and thereby allows for convenient meta-level analysis and communication (see e.g., Richman [2,8]) and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

16. Claims 11, 12, and 15–19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart, *et al.* (US 20010032120 A1) in view of Berkson (US 6049779) and further in view of Richman (US 6754874 B1) and further in view of Scarborough, *et al.* (US 7080057 B2).

Claim 11:

Stuart, as shown, describes and/or discloses the following limitations.

- *generating a performance score based on efficiency* (Stuart [abstract]: “A method of evaluating call agent efficiency is disclosed...”);
- *receiving a feedback acknowledgement entry from the supervisor* (Stuart, in at least [0006] states: “In other words, all agent call handling data is collected and then stored for a period of time. [...] Further, there is often very little meaningful feedback

provided to the agent. What feedback that may be given to the agent may come from a manager or supervisor who has little time to interpret the many reports received [...]." (emphasis added) where 'reports received' and 'stored for a period of time' implies some acknowledgment to a system, hence corresponds to *receiving a feedback... entry* and 'feedback' pertains to performance feedback provided to the 'agent' which corresponds to an employee under the *supervisor.*);

- *displaying performance scores of an employee to a supervisor* (Stuart, in at least [0054] states: "[A] supervisor is presented with a full picture that can allow him or her to make an informed and accurate judgment regarding the performance of individual call agents [...]" (emphasis added) where 'presented with a full picture' corresponds to *displaying performance scores* and 'call agents' corresponds to *employee*. As this is presented to a 'supervisor' it is displayed to a supervisor.);

Stuart does not specifically teach the following limitations, but Berkson, in an analogous and related art, does as shown.

- *generating a performance score based on professionalism* (Berkson [1,58]): "However, qualitative measures, such as courteousness, professionalism, and accuracy of response, are obtained by a supervisor listening to a call and evaluating the agent's performance." (emphasis added));

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Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart nor Berkson specifically teach the following limitations, but Richman, in an analogous art does as shown.

- *generating a performance score based on quality* (Richman [Fig. 4]: "Applies goal and local quality processes..." in the context of a 'scorecard.);
- *generating a performance score based on effectiveness* (Richman [7,41]: "For example, a scorecard may contain the following competency areas: core technical, leadership effectiveness, management effectiveness, marketing sales & communication, service excellence, and specialized technical." (emphasis added) where, *ipso facto* the associated scores are *generat[ed]*);
- *prompting the employee to interact with the feedback acknowledgement entry* (Richman, in at least col. 5, line 11 states: "Users interact with the Evaluation System [...] For example, an employee is able to access her own evaluation information, but can not access the evaluation information files of other co-workers. It should be noted that a user may have multiple roles. For example, a group manager may be both a Feedback Receiver and a Feedback Provider. The Evaluation System recognizes this dual role and automatically avoids what would otherwise be redundant information requirements." (emphasis added) where 'users interact' corresponds to *the employee ...interact[ing]* and 'Feedback Receiver ...' corresponds to *the*

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feedback acknowledgement entry and 'automatically avoids' corresponds to prompting the employee to interact.); and

- *tracking accomplishment of the interaction* (Richman, in col. 8, line 58 states: "Career Counselors, project managers, Feedback Providers, and human resources officers can query the Evaluation System to provide a list of Feedback Receivers who are delinquent in creating project scorecards, and can also use the Evaluation System to automatically send the tardy Feedback Receivers reminder emails. Tracking capability continues through all stages of the evaluation process with real-time reporting." (emphasis added) where 'all stages of the ... process' encompasses *tracking ... of the interaction.*).

Both Stuart/Berkson and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods. Stuart refers to both quantitative and qualitative metrics and Berkson delineates many qualitative performance categories while both Berkson and Richman provide methods for using them to generate scoring systems and 'scorecards'. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating both quantitative and qualitative measures in employee performance appraisals provides a broader reach in how employees are appraised and so provides greater flexibility and applicability of the invention and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart, nor Berkson nor Richman specifically teach the following limitations, but Scarborough, in an analogous art does as shown.

- *generating a performance score based on attendance* (see Scarborough [7,60]. Examiner further takes **Official Notice** that it is old and well-known as well as common place employee appraisal arts that attendance is a typical metric used in the evaluation of employees.);

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The inventions of Stuart, Berkson, Richman and Scarborough pertain to methods for evaluating the performance of employees or prospective employees using various methods of data collection and processing. Scarborough specifically describes and/or discloses the use of attendance data—a commonly used metric in such contexts as indicated in the above **Official Notice**. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart/Berkson/Richman and Scarborough to create a flexible and usable employee management system that encompasses targeted attendance because attendance is an important and well-established factor in productivity rates. By incorporating this data in an employee management system, a realistic and useful set of evaluation criteria are established thereby making such invention more practical and useful and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 12:

Neither Stuart nor Berkson specifically teach the following limitations, but Richman, in an analogous art does as shown in the following limitations.

- *prompting a supervisor to make a periodic review* (Richman, in at least col. 1, line 34 states: "Typically a company's evaluation policy calls for periodic evaluations (often annual or biannual)." (emphasis added) where 'periodic evaluations' corresponds to *periodic review* and 'annual or biannual' corresponds to a scheduled review, hence is prompted by the schedule.);
- *ranking employees in response to the periodic review* (Richman, in at least col. 8, line 26 states: "The overall rating consists of one of NME (not meeting expectation), MSE (meeting some expectations), PW (performs well and meets expectations), or EE (exceeds expectations). In alternative embodiments of the present invention the rating consists of a numerical score (1-5, 1-10, 1-100), a traditional letter grade (A-F), or other scoring systems." (emphasis added) where 'overall rating' together with 'rating consists of ...' corresponds to *ranking employees*. In col. 6, line 12 Richman

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also states: "The Career Counselor [...] inputs information summarizing the counseling sessions into the Evaluation system." (emphasis added) where the 'evaluation' is thus based on 'inputs' resulting from employee reviews, or 'counseling sessions'.);

- *tracking accomplishment of the review* (Richman, in col. 8, line 63 states: "Tracking capability continues through all stages of the evaluation process with real-time reporting."); and
- *reporting the employee rankings for performance incentive decisions* (Richman, in at least col. 20, line 20 states: "The Evaluation System incorporates sources of feedback [...] that will allow for more informed [...] promotion and incentive decision making." (emphasis added) where 'the evaluation system' provides for *reporting...rankings* and 'incentive decision making' corresponds to *performance incentive decisions*.)

Both Stuart and Berkson, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and various ways to convey appraisal information including the evaluation of groups of employees. As feedback is an important element in viable appraisal systems, combining the above teachings with that of Richman are advantageous to market success. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating a feedback component in performance appraisals systems provides a greater likelihood of market success of the system and further provides incentives to increase productivity and quality (Richman [1,12]) and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 15:

Stuart does not specifically teach the following limitations, but Berkson, in an analogous and related art, does as shown.

- *collecting data indicative of an agent's professionalism* (Berkson [1,58]: "However, qualitative measures, such as courteousness, professionalism, and accuracy of response, are obtained by a supervisor listening to a call and evaluating the agent's performance." (emphasis added) where the emphasized text corresponds to *collecting data indicative...*);

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart nor Berkson specifically teach the following limitations, but Richman, in an analogous art does as shown.

- *collecting data indicative of an agent's quality of work* Richman [Fig. 4]: "Applies goal and local quality processes..." in the context of a 'scorecard' which is used to *collect[] data indicative...*;
- *designating a grade level to the agent based on the collected data indicative of the agent's quality of work* (Richman [8,13-35] wherein "a traditional grade (A-F)" is used to indicate *agent's quality of work*); and
- *designating a point value to the agent based on the collected data indicative of the agent's professionalism* (Richman [7,37]: "In a preferred embodiment of the present invention the scorecard also contains a list of competencies grouped into competency areas. Competencies identify certain core employee skills and attributes and will vary depending on the industry. For example, a scorecard may contain the

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following competency areas: core technical, leadership effectiveness, management effectiveness, marketing sales & communication, service excellence, and specialized technical. Each competency area contains a list of specific task competencies. For example, the core technical competency for an accounting group might include utilizing business knowledge, understanding and using technology, complying with and applying company audit methodology, applying professional standards, and other competencies." (emphasis added) and where the use results in "an overall final appraisal rating..." ([14,27])).

Both Stuart/Berkson and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods. Stuart refers to both quantitative and qualitative metrics and Berkson delineates many qualitative performance categories while both Berkson and Richman provide methods for using them to generate scoring systems and 'scorecards'. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating both quantitative and qualitative measures in employee performance appraisals provides a broader reach in how employees are appraised and so provides greater flexibility and applicability of the invention and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 16:

Neither Stuart nor Berkson specifically teach

- *the grade level designated to the agent is based on the agent's contribution and is selected from the group consisting of Key Contributor, Quality Plus Contributor, Quality Contributor, Contribution Below Expectations, and Contribution Needs Immediate Improvement.,*

but Richman, in an analogous art teaches [20,33] "A company can use the Evaluation System to assess its bench strength in various competency areas, determining where its employees are

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strong and where improvement is needed. The Evaluation System can be used to uncover correlations between client satisfaction and employee competency ratings, identifying key skills to emphasize in future training. Effective managers and leaders can be identified by tracking the progress and performance of their employees." (emphasis added) where the emphasized text corresponds to *the grade level* and the 'key skills' corresponds to the several 'contribution' attributes. Although Stuart, Berkson and Richman do not specifically use the various terms and qualifiers such as 'quality plus' and 'key contributor', Examiner takes **Official Notice** that it is old and well-known as well as common place in the employee appraisal and scorecarding arts to incorporate or employ such terms or obvious variations thereof in assigning some evaluation or grade in an assessment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stuart and Berkson and Richman and what is old and well-known as well as common place in employee performance assessment arts and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 17:

Stuart teaches methods where

- *the point value designated to the agent is based on the agent's skill level in the areas of unparalleled client satisfaction* (Berkson [9,23] "customer satisfaction" and in [11,63] in the context of point values "on a scale"), *teamwork* (Berkson [5,40] which describes promoting teamwork), *respect for the individual, diversity* (Berkson [1,59] "courteousness" corresponds to *respect for the individual* and *diversity*), and *integrity* (Berkson [1,60] "accuracy of response" corresponds to *integrity*).

Neither Stuart nor Berkson specifically teach *the point value designated to the agent is based on the agent's skill level* in the aforementioned areas, but Richman, in an analogous art, does. Richman describes "interpersonal skills" in the context of a scorecard (Richman [Figs. 4 and 9]) and more generally in [20,37] "The Evaluation System can be used to uncover correlations between client satisfaction and employee competency ratings, identifying key skills to emphasize

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in future training." (emphasis added) where the emphasized text corresponds to the aforementioned skill categories. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made

Claim 18:

Stuart teaches methods for employee performance evaluations using categories such as *efficiency* (Stuart [abstract]: "A method of evaluating call agent efficiency is disclosed..."). Stuart does not specifically teach use of the category of *professionalism*, but Berkson, in an analogous and related art, does (see Berkson [1,58]: "However, qualitative measures, such as courteousness, professionalism, and accuracy of response, are obtained by a supervisor listening to a call and evaluating the agent's performance." (emphasis added)).

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart nor Berkson teach methods of establishing a *performance grade* ... *based on quality and effectiveness*, but Richman, in an analogous art does. Richman [Fig. 4]: "Applies goal and local quality processes..." (emphasis added) in the context of a 'scorecard' and in Richman [7,41]: "For example, a scorecard may contain the following competency areas: core technical, leadership effectiveness, management effectiveness, marketing sales & communication, service excellence, and specialized technical." (emphasis added) where, *ipso facto* the associated scores are *generat[ed]*. Also, in Richman [8,26] reference is made to an "overall rating" using "a numerical score" and "a traditional letter grade".

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Stuart, Berkson and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods. Stuart refers to both quantitative and qualitative metrics and Berkson delineates many qualitative performance categories while both Berkson and Richman provide methods for using them to generate scoring systems and 'scorecards'. Stuart, Berkson and Richman do not specifically teach that such categories must be weighted according to

- *80% of the performance grade is based on quality, effectiveness, and efficiency;*
- *10% of the performance grade is based on attendance; and*
- *10% of the performance grade is based on professionalism,*

but Examiner takes **Official Notice** that it is old and well-known as well as common place in the scorecarding arts to weight various categories of performance according some weighting scheme using coefficients that add up to 100%. The weights of 80%, 10% and 10% are obvious variations on what is old and well-known. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart, Berkson and Richman because incorporating both quantitative and qualitative measures in employee performance appraisals and combining them provides a broader reach in how employees are appraised and so provides greater flexibility and applicability of the invention and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Claim 19:

Stuart, as shown, describes and/or discloses the following limitations.

- *the performance score for efficiency is based on average handle time and after call work* (Stuart [0004]: "the average work time per call...." and in [0041] "an agent might work overtime...");
- *the performance score for effectiveness is based on schedule adherence* (Stuart [0042]: "As indicated, it should be appreciated that Agent 2 is over fours times more cost effective than Agent 1. This difference is due not only to the lower compensation

attributed to Agent 2, but also to the higher number of productive hours of Agent 2.

While it is true that Agent 2 started with a higher number of scheduled, or base, work hours than Agent 1, note that the net work time adjustments for Agent 2 were positive, resulting in a high number of productive hours for the week. This can be compared to Agent 1, whose base work time was reduced by nearly ten hours, or almost one third, to reflect his or her true total productive hours." (emphasis added);

Stuart does not specifically teach the following limitations, but Berkson, in an analogous and related art, does as shown.

- *the performance score for professionalism is based on teamwork and integrity* (Berkson [1,58]: "However, qualitative measures, such as courteousness, professionalism, and accuracy of response, are obtained by a supervisor listening to a call and evaluating the agent's performance." (emphasis added). Berkson does not specifically state that a score for professionalism should be based on *teamwork and integrity, per se*, but Examiner takes **Official Notice** that it is old and well-known as well as common place employee appraisal arts to associate attributes and measures of professionalism with *teamwork and integrity*.);

Stuart describes and/or discloses methods for evaluating call center agent performance as does Berkson. Stuart utilizes quantitative measures although alludes to qualitative measures as well, but does not provide further details. Berkson, however, does provide further details as to the incorporation of qualitative factors in performance appraisals such as professionalism and further combines such with quantitative data as shown in other reference cited therein (see Berkson [1,50]). Moreover, such attributes as teamwork and integrity are typically associated with professionalism. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of Stuart and Berkson as the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

Neither Stuart nor Berkson specifically teach the following limitations, but Richman, in an analogous art does as shown.

- *the performance score for quality is based on an overall quality score* (Richman, in at least col. 8, line 26 states: "The overall rating consists of one of NME (not meeting expectation), MSE (meeting some expectations), PW (performs well and meets expectations), or EE (exceeds expectations). In alternative embodiments of the present invention the rating consists of a numerical score (1-5, 1-10, 1-100), a traditional letter grade (A-F), or other scoring systems." (emphasis added) where 'overall rating' together with 'rating consists of ...' corresponds to *ranking employees*. In col. 6, line 12 Richman also states: "The Career Counselor [...] inputs information summarizing the counseling sessions into the Evaluation system." (emphasis added) where the 'evaluation' is thus based on 'inputs' resulting from employee reviews, or 'counseling sessions'.);
- *the performance score for attendance is based on absences and tardies* (Examiner takes **Official Notice** that it is old and well-known as well as common place to base attendance performance ratings on the number of absences and tardies.)

Both Stuart/Berkson and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods. Stuart refers to both quantitative and qualitative metrics and Berkson delineates many qualitative performance categories while both Berkson and Richman provide methods for using them to generate scoring systems and 'scorecards'. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating both quantitative and qualitative measures in employee performance appraisals provides a broader reach in how employees are appraised and so provides greater flexibility and applicability of the invention and the technical ability existed as the time of the invention to combine the elements as claimed and the results of the combination were predictable.

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Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Dr. **Mark A. Fleischer** whose telephone number is **571.270.3925**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Beth Boswell** whose telephone number is **571.272.6737** may be contacted.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free). Any response to this action should be mailed to:

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Examiner, Art Unit 3623 9 September 2008

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